21846

NATIONAL LIBRARY
OTTAWA

CANADA

BIBLIOTHÈQUE NATIONALE
OTTAWA

NAME OF AUTHOR.... James Kenneth Hurzil

TITLE OF THESIS.... The Concept of Authority and the Teachers Right to be Authority

UNIVERSITY.... of Alberta

DEGREE FOR WHICH THESIS WAS PRESENTED... M. Ed

YEAR THIS DEGREE GRANTED... 1974

Permission is hereby granted to THE NATIONAL LIBRARY OF CANADA to microfilm this thesis and to lend or sell copies of the film.

The author reserves other publication rights, and neither the thesis nor extensive extracts from it may be printed or otherwise reproduced without the author's written permission.

(Signed).. J. Kenneth Hurzil

PERMANENT ADDRESS:

250 Hillcrest Pl.
Edmonton, Alta

DATED.... October 7 1974

NL-91 (10-68)

THE UNIVERSITY OF ALBERTA

THE CONCEPT OF AUTHORITY AND THE TEACHER'S RIGHT TO BE IN AUTHORITY

by

© J. KENNETH HUZIL

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH

IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE

OF MASTER OF EDUCATION

IN

PHILOSOPHY OF EDUCATION

DEPARTMENT OF EDUCATIONAL FOUNDATIONS

EDMONTON, ALBERTA

FALL, 1974

THE UNIVERSITY OF ALBERTA

FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled THE CONCEPT OF AUTHORITY AND THE TEACHER'S RIGHT TO BE IN AUTHORITY submitted by J. Kenneth Huzil in partial fulfilment of the requirements for the degree of Master of Education in Philosophy of Education.

N. C. Bhattacharya
.....
Supervisor

.....

.....

Date 22nd August, 1974

ABSTRACT

This essay tries to indicate the core or central meaning of the concept of "authority." Since authority is a concept which is discussed in various domains; namely, law, politics, sociology, education, philosophy, and political philosophy, the core meaning of the concept, at places, becomes blurred or confused. This thesis is an attempt to show that the concept of "authority" has a core or central meaning. This thesis tries to show that the concept of "authority" in our schools--in spite of all the talk about love and care--relies more on the central or core meaning as I have tried to show. I also have tried to show how the Criminal Code of Canada protects teachers in their exercise of authority.

ACKNOWLEDGEMENTS

I would like to express my gratitude to my wife, Dodie, for her love and support during the development of this thesis. To my son, Jason, thank you for inspiring this work.

I wish to express my sincere gratitude to my Supervisor, Dr. N. C. Bhattacharyya, whose advice and assistance have been instrumental in the development of this thesis. I also wish to thank Dr. Bhattacharyya for the many hours of assistance throughout my graduate program.

TABLE OF CONTENTS

CHAPTER		PAGE
I	INTRODUCTION	1
II	LEGITIMATE FORCE	5
	i. Force	7
	ii. Obligation	13
	iii. Legitimacy	17
III	GROUNDS OF ENTITLEMENT TO AUTHORITY	20
	i. Legal/Rational rules	21
	ii. Traditional rules	24
	iii. Charismatic duty	26
	iv. Being an Authority in the Sphere of Knowledge	32
IV	CLAIMS TO TEACHER AUTHORITY	39
	i. On Being an Authority	40
	ii. On Being an Expert	43
	iii. Summary	46
V	CONCLUSION	50
BIBLIOGRAPHY	. . . . .	53
APPENDIX: Legal Protection for Teachers in Authority.		59

CHAPTER I

INTRODUCTION

The purpose of this thesis is to uncover the major claims of the teacher to be placed in authority, in the sphere of behavioral and social control, over children and young adults. Such a study is not difficult to justify because teachers, as a matter of fact, are placed in authority to "properly" control children under their care. We can seriously ask, therefore, what right or claims to legitimate authority, the teacher can appeal to when questions of legitimacy are raised.

My initial concern with the concept of "authority" began after reading R. S. Peters' Ethics and Education.[1] In this most recent account of the concept of "authority," Peters tells us that he is going to get clear on the appropriate form of social control in schools by addressing himself to the key concept of "authority." Peters' concern about the appropriate forms of social control in schools is lodged in this circumstance: if a school mirrors the type of social control of a prison or the distorted form of "the rat race in society," then the organization of a school can be distorted to reflect it.[2] School authority

---

[1] Peters, R. S., Ethics and Education, (London: George Allen and Unwin, Ltd.), 1959.

[2] Ibid., pp. 237-238.

should not, Peters would suggest, involve the social control of coercion nor a system of extreme reward and punishment. Furthermore, Peters says:

> The concept of 'authority' is necessary to pin-point ways in which behavior is regulated *without* recourse to power--to force, propaganda, and threats.[3]

In Chapter II, I argue that Peters' views on the concept of "authority" are neither sound from a descriptive point of view nor realistic. Contrary to Peters' claim that behavior can be regulated without recourse to force or threat of punishment, I argue that "force" and the concept of "authority" are closely connected. My major claim, in Chapter II, is that Peters' account of the concept of "authority" is lofty (too idealistic) and that he is not using the word "authority" in a descriptive way.

I often refer to Peters' work on the concept of "authority" because (1) Peters has emphasized the concept of "authority" in three well-known published works, and (2) Peters discusses both authority and school authority. In addition to Ethics and Education, I have in mind his essay entitled "Authority," and his work Authority, Responsibility, and Education.[4] However, this thesis

---

[3] Peters, R. S., Authority, Responsibility, and Education, (London: George Allen & Unwin, Ltd., 1959), p. 21.

[4] Peters essay "Authority" first appeared in the Proceedings of the Aristotelian Society, Vol. 32, (1958). "Authority" is also reprinted in Political Philosophy, Quinton, Anthony, (ed.), (London: Oxford University Press, 1967), pp. 83-96.

is not on Peters' work; I have tended to emphasize Peters' views because he emphasizes the concept "authority" as well as "teacher authority." Political or legal philosophers, it is noteworthy, do not specifically discuss teacher authority. Educational philosophers who discuss the concept of teacher authority, as Brian Crittenden in his Education and Social Ideals, do not pay sufficient attention to the "distinct juridical notion of authority" and tend to discuss authority in the educational sphere "only in its normative sense."[5] My primary aim, on the other hand, is to consider the meaning of "authority" in a descriptive sense in which it belongs to the domains of politics and law, and then to examine the teachers' right to be placed in authority in our legally established school system.

After finding, in Chapter II, that "authority" is closely connected to "force" or "power," and concluding that "authority" justifies the use of "force," I undertake to uncover the major claims to legitimate authority.

After uncovering four major claims to legitimate authority, I consider these claims in connection with the right of the teacher to be placed in authority. I begin by taking up the distinction between being an authority, in the sphere of knowledge, and being in authority, in the sphere of law; that is, social control. At the end of this Chapter IV, I show how the only

---

[5]Crittenden, Brian, Education and Social Ideals, (Toronto: Longman Canada, Ltd., 1973), pp. 67-68.

"acceptable" claim to teacher authority in our society is the legal one.

Since the legal claim is the only acceptable claim to teacher authority, the Appendix deals with the right of the teacher to apply legal, or "legitimate," force; and the legal bounds of excessive punishment. The Appendix, therefore, is legal in nature.

CHAPTER II

LEGITIMATE FORCE

Peters' encounter with the concept of "authority" in his work Authority, Responsibility, and Education led him to this conclusion:

> The concept of 'authority' is necessary to pinpoint ways in which behavior is regulated *without* recourse to power--to force, propaganda, and threats.[1]

In addition to this very firm position, Peters also says:

> It may be well, of course, that the ability to exercise power may be a necessary condition for the exercise of some forms of authority. Behind the voice there is often the cane. . .[2]

What are we to make of Peters' recognition of force as a necessary condition for the exercise of certain forms of authority and his use of a school example, and the view that authority is a term which refers to a kind of behavior foreign to irrational persuasion? The key to answering this significant question is found in Peters' concern with the type of social control appropriate to the school.

---

[1] Peters, R. S., Authority, Responsibility, and Education, (London: George Allen & Unwin, Ltd., 1959), p. 21.

[2] Ibid., p. 21.

In Ethics and Education, Peters tells us he is going to get clear on the appropriate form of social control in schools by addressing himself to the key concept of "authority." He says that if the school mirrors the type of social control of a prison or the distorted form of the rat race in society, then the organization of a school can be distorted to reflect it. Peters' concern with certain forms of social control arises from his view that the purpose of a school is to transmit to children that which a community regards as worthwhile and valuable. The manner of transmission, to be consistent with what the community values, must not include, Peters maintains, the social control of coercion nor a system of extreme reward and punishment.[3]

Peters seems to confuse and distort the core or central meaning of the concept of "authority" because of an honorable concern about what school authority should be like. His confusion is demonstrated by his recognition of the role of force, on the one hand, and the development of a lofty conception of the concept of "authority" on the other. Taken this way, I would not argue with the view suggesting that school authority should be different in the sense that school organization should not mirror more coercive forms of authority. But taken as a description and clarification of the concept of "authority" itself, it must be realized that Peters' contention that authority in educational

---

[3] Peters stresses the importance of the manner of transmission in Chapter IX of Ethics and Education, pp. 237-238.

contexts should not require conformity through the use of force, is normative. This is not to imply that portions of Peters' analysis are not to be regarded as significant contributions to the understanding of the concept of "authority." Indeed, much of his three written accounts contain important insights which I shall discuss. However, "authority" defined as a concept which pin-points how conformity is brought about without recourse to power or force and other extra-rational causes will have to be dismissed. Authority, in its many forms, does tell us something about conformity, but what it tells us is obedience is due to authority as a power backed by force. This "force," however, can be of various forms.

Since Peters does not answer the question "what is authority?" I shall began with a general account of "force" and its place within the concept of "authority" as visualized by authors who hold a view somewhat contrary to Peters' view. By beginning with "force" I hope to get clearer on the concept of "authority" for as Peters says, and I agree, it is a key concept.

A theory of obligation, whatever its form, attempts to answer this question: Why should we obey the authority? The answer can be obtained, Quinton suggests, from an interpretation of the concept of "authority."[4] Although citizens seldom ask this important question, Quinton maintains, when it is asked the response will be in terms of the fear of the consequences for

---

[4] See Quinton, Anthony, (ed.), Political Philosophy, (London: Oxford University Press, 1967), p. 13.

disobedience. This kind of response, it seems fair to assume, takes the concept to be power to impose consequences or the ability to wield force. In claiming that "force" is an essential element in the concept of "authority," Dennis Lloyd in his The Idea of Law refers to H. A. Frankfort's description of the two deities of ancient Mesopotamia. According to Frankfort, the Mesopotamians singled out two deities for special reverence; namely, Anu, the god of sky, and Enlil, the god of storm. The sky god issued commands which required obedience by the very fact of having come from a supreme deity. Anu was the symbol of authority. Yet, even these ancient worshippers realized that Anu's commands did not guarantee compliance. They made provision, therefore, for Enlil, the god of storm. In response to Frankfort's description, Lloyd refers to the god of storm as "force" in terms of its application to legal sanction. Without the god of storm, Lloyd says, the commands of the god of sky could not be enforced and would not be obeyed.[5] The enforcement of legal authority, Lloyd claims, requires force or legal sanction. On the topic of force, Quinton says both Austin and Weber:

> . . . hold that a large measure of effectiveness in imposing its rules is necessary to a state. Weber adds that the means by which this effectiveness is secured is wielding the only physical force that is generally recognized as legitimate.[6]

---

[5] It is noteworthy that Lloyd firmly contends that moral obligation to obey legal authority is not a sufficient condition for its existence.

[6] Quinton, Anthony, (ed.), Political Philosophy, (London: Oxford University Press, 1967), p. 6.

Since legitimacy and Weber are taken up in Chapter III, I would like now to say something about Austin because he is the author of the command theory of law which is regarded by many as a justification for a totalitarian government system based on force. According to Austin, a sovereign is a determinant human being who is characterized by two features. First, he is not in the habit of obedience to anyone; and second, he generally receives habitual obedience from society. When one disobeyed a command of the sovereign, the theory holds, he would be visited by an evil; that is, punishment. A visitation of force, whether it was in terms of physical punishment or some other harsh form, was backed by the power of the sovereign; that is, the ability to force persons to obey. This does not suggest that Austin's notion of sovereign has the same meaning as legitimate authority; force, however, is the key to describing how conformity is brought about in Austin's theory. Since Austin, Weber, Quinton, and Lloyd emphasize the importance of force in their discussion of authority, I wish to review Peters' notion of force to uncover his reasons for failing to emphasize it as well.

Peters takes issue with de Jouvenel's view:

> . . . to my notice I see the work of a force: that force is authority . . . [7]

He says that to think of authority as a kind of force is to

---

[7] Peters, R. S., Authority, Responsibility, and Education, (London: George Allen & Unwin, Ltd., 1959), p. 13.

reduce man's conformity to rules to the attraction of iron filings to a magnet. The analogy takes "force" to refer, it is perfectly clear, to natural inability to resist certain kinds of conformity. Since we do not like to regard ourselves being forced in the sense Peters suggests, we may tend to accept the view that force is a condition reserved for physical or insentient entities. There are, of course, other analogies which can be used to show how force is appropriate in terms of the necessity, on the part of human beings, to conform under certain circumstances. One of the best examples of this type is found in H. L. A. Hart's The Concept of Law. His notion of being obliged in the sense one is forced to give one's money to a gunman is a more appropriate analogy, and properly spoken of in human situations. Here the subject takes into account the seriousness of the gunman. He asks: Is it a real gun? Will he shoot? and so on. After due consideration, perhaps of a hasty nature, the subject agrees to turn over the money. Surely we agree that there is a clear element of compulsion present in situations of this sort. Would not one be essentially correct, if placed in such a situation, in characterizing this situation as one of being forced? If the gunman, in the analogy, symbolized Austin's uncommanded commander, or the school teacher with cane in hand, then would we not agree that such force, whether actual or potential, is the force behind and of authority? Hart's example of the gunman shows how force is understood in terms of the human condition. Hart's analogy is appropriate but Peters' is inadequate.

Given that Peters' analogy is indeed one of an absolute nature, it seems relevant to pursue the meaning of "force" as it applies not to iron filings but to human beings.

Lon Fuller's The Case of the Speluncean Explorers[8] was written to show how philosophies of law differ, but it also demonstrates how compulsion to obey legal authority is not of an absolute nature. The case shows us how persons are normally forced to obey a legal order because it is backed by force; that is, it is backed by a threat. For these reasons I would like to review the facts of the case and emphasize force as a sanction applied by legal authority.

Fuller describes how a party of five explorers of caves came to be trapped indefinitely within the confines of a cave. Curiously enough, it seems, the explorers possessed a wireless radio. After being in contact with a corp of expert rescuers and having realized that they could not survive until after they could possibly be rescued, the Speluncean explorers decided to eat one of their number. This they did. Upon being rescued, the four remaining members of the party were arrested and charged with murder.

Law N.C.S.A. (n. s.) 12-A., in The Case of the Speluncean Explorers states: "Whoever shall wilfully take the life of another shall be punished by death."[9]

---

[8] The Case of the Speluncean Explorers is hypothetical. An actual case, The Crown v. Dudley & Stevens, is about a cabin boy who was killed and eaten because he was the weakest of the survivors of a shipwreck at sea. The court found the defendants (Dudley and Stevens) guilty of murder as charged. A public order similar to N.C.S.A. (n. s.) 12-A. was applied.

[9] Fuller, Lon, L., The Problem of Jurisprudence, (Brooklyn: The Foundation Press, Inc., 1949), p. 4.

The force of this sanction is clear for if one wilfully takes the life of another, provided he is caught and found guilty, then he can predict he will be punished by death. In the case of these cave explorers, the power of authority to create and enforce this public order is derived from the legitimate existence of the Commonwealth. The authority of the Commonwealth justifies the use of force. Here force refers to the legitimate ability to apply the sanction, and in this case it is public law N.C.S.A. (n. s.) 12-A. The Supreme Court in the Speluncean case found the four men guilty of murder even though the method of selection used was regarded as basically fair by the court.[10] The authority of the Queen's Captain who orders a seaman to "walk the plank," it is noteworthy, also utilizes his power of authority in both his pronouncements and their enforcement.

The Speluncean explorers while under extreme and unusual

---

[10]Fuller has the Supreme Court Justices represent views of the various "schools" of legal thought; viz, Natural law, Legal Realism (American), and Legal Positivism. The natural lawyer argues that N.C.S.A. 12-A should not apply because the explorers were in a "state of nature." The confines of the cave left the explorers in a condition similar to Hobbes' description of life without civil society. The legal positivist, of course, insists that the only allowable legal exception for murder is self-defence, and concludes, therefore, that the law must be applied since the explorers clearly committed a wilful act of murder. The realist argues that the public should be consulted to determine whether the law should be applied. The positivists hold the balance of power, however, and find the four remaining Speluncean explorers guilty as charged.

circumstances decided to disobey a public law. Usually a legal sanction covering such crimes is so severe, in the sense it is an actual threat, its mere existence renders talk of choice void of consideration. The degree of compulsion to conform to rules, orders, or commands, can render disobedience a practical impossibility. However, this admission does not reduce the obedience of law by human beings to the necessary attraction of iron filings to magnets.

There is another claim about force held by Peters which will have to be dismissed. De Jouvenal is misguided, Peters claims, because force obscures what is distinctive about human conformity; namely, human beings are rule-following animals. Human beings, Peters would note, regardless of the context, obey rules for either of two basic reasons: (1) one obeys because one believes sanctions will be applied and one feels forced to comply; or (2) one obeys because one expects others to do the same and feels an obligation to obey. Quinton, as I have noted, thinks persons would choose the first answer as their reason for compliance, thus his emphasis on the importance of force. Peters' emphasis on rule-following without recourse to force is consistent with the second answer; it is not clear, to be sure, whether Peters would say the second answer should be chosen or whether it is chosen. Both answers to the question presuppose human beings are rule-following, and neither answer contrary to Peters' contention, obscures this significant fact. Alternatively, such answers emphasize the obvious fact that human beings can choose, unlike other animals, to follow rules by

pointing to the reasons for their choice.[11] Furthermore, the distinctive feature about human beings is not so much that they are rule-following, but that they have the ability to choose whether to obey or disobey rules.

Authority is a kind of omnipresent force or power which strives to get persons to follow rules, but when this fails those in authority resort to coercion and other extra-rational techniques. De Jouvenal is correct in claiming that "authority" is a kind of force. Authority, I shall also contend, is a power which legitimizes the use of force. Before supporting this position, I would like once again to refer to Hart, but this time to his notion of obligation. It is relevant to deal with this now because the notion can be used to show why Peters does not include force as part of the concept of "authority."

In his account of Austin's failure to explain obligation, Hart maintains that a distinction must be drawn between being obliged and having an obligation to obey the law. One is obliged, Hart says, to hand over his money to the gunman if he agrees to do so. But being obliged in this sense does not, he maintains, create an obligation. Just as an observer at a traffic light cannot recognize that some persons stop for a red light because they <u>feel</u> an obligation to do so, the observer of the gunman situation does not

---

[11] By reason, I mean that X has a justification (a best, or at least, a good reason) for doing, or not doing Y.

know whether one feels an obligation to hand over one's money. The key to understanding the notion of obligation is to view it from the internal point of view. Hart goes on to say that feeling an obligation to obey from the internal point of view eliminates the need for force. Persons who feel an obligation to obey the law for moral or personal reasons, it is perfectly clear, do not have to be forced to do such. Such persons seem to be the type Peters has in mind. They are rule-following because they feel an obligation, and recourse to force would not only be unnecessary but it would be an insult as well. Is Peters assuming human beings regard orders, commands, and pronouncements of authority from a consistent, internal point of view? It seems that such an assumption underlies his view:

> The concept of 'authority' is necessary to pinpoint ways in which behavior is regulated *without* recourse to power--to force, propaganda, and threats.[12]

If Peters is making this assumption, then this explains his de-emphasis of force in his analysis. Assuming the opposite, or by holding that persons do not obey out of a sense of obligation, I suggest, would lead Peters to hold that force is necessary to pin-point ways in which behavior is regulated.[13] Peters' view which has it that children are to be initiated in such a manner as to be on the

---

[12] Peters, R. S., Authority, Responsibility, and Education, (London: George Allen & Unwin, Ltd., 1959), p. 21.

[13] In this context, "force" can be taken to be either potential or actual.

inside, so to speak, of their subject-matter tends to strengthen the view he does assume persons must feel, or should feel, an obligation to follow rules.[14]

Just as Peters thinks the very best of human beings in their capacities as rule-followers, others take it that persons must be obligated to obey if they are to be rule-followers. The bulk of Quinton's rule-followers, it seems fair to say, are apathetic. When put on the spot, however, they are aware of the gunman. Lloyd's emphasis on the element of force also seems to recognize that human beings do not conform to legal authority out of a sense of internal obligation. Lloyd says:

> . . . there is something which we may call a peculiar aura or mystique investing the lord, the policeman, or the judge which arouses a certain response on the part of the other party, namely that he feels that superior party . . . can legitimately give orders which he, the inferior party, feels in some sense obliged, willingly or unwillingly, to obey.[15]

Lloyd's use of the word "feels" is not in terms of obligation as understood by Hart, and his use of the word "obliged" should dismiss any misgivings about this passage. The passage shows us how feelings of inferiority, notions of power, force, and that of legitimacy, are closely connected with the concept of "authority."

---

[14]Peters' goal of pursuing worth-while activities, understanding and caring for them, and becoming reformed can be found in his Ethics and Education, (London: George Allen & Unwin, Ltd. 1959), pp. 15-62.

[15]Lloyd, Dennis, The Idea of Law, (Harmondsworth: Penguin Books, 1964), p. 28.

I would like to add the teacher to Lloyd's list of authority types because school authority also legitimizes the orders given to students. The words "obliged" and inferior party seem particularly characteristic of the pupil. I shall have more to say about teacher authority in the chapter bearing the title.

It is now appropriate to move on to an account of authority defined as legitimate force, or power clothed in the garments of legitimacy. Leslie Lipson in The Great Issues of Politics begins the account of politics in the predictable manner with the idea of group conflict. Conflicts between groups, Lipson contends, can be resolved by one of two methods. First, a group can use force and suppress or overpower the unsuccessful side. Second, one of the sides can voluntarily submit after peaceful persuasion. Bringing these methods within the sphere of the state and recognizing that protection, order, and justice are the ends to which the state aspires Lipson says:

> Since an institution must possess the means appropriate to its function, it follows that, in order to give protection, the state must have force at its disposal.[16]

Lipson's examples of force are not atypical, and are consistent with the manifestations of force mentioned earlier. Such examples of force include, Lipson says: the police; militia; army; the courts; and prisons. Protection as the initial function of the

---

[16] Lipson, Leslie, The Great Issues of Politics, (New Jersey: Prentice-Hall, Inc., 1965), p. 63.

state requires this "technique of government," as Lipson calls it, force. Force is a sufficient condition for protection. However, it is true of political systems that:

> Protection grows into order and order seeks to blossom into justice.[17]

To create the order Lipson speaks of something more than force is required. This extra something is power. Power, says Lipson, is simply force, but with consent added. As the analysis continues, Lipson takes the very firm position that consent plus force equals power. Power, Lipson notes, is a sufficient technique to produce order because it is a product of the mobilization of support:

> But the evolution of governmental techniques does not terminate with power. As order, to be securely stabilized, attempts to gain acceptance as justice, so does power aspire toward a concept yet more advanced.[18]

What Lipson has in mind at this point is our key concept "authority." To understand what "authority" means, the author introduces three groups which compose the state. There are the officials or leaders, those who support them, and those who dissent. Power (or consent + force) consists of a combination of officials and those who support them. Officials here have enough supporters which ameliorates their chances to wield force. Power, Lipson warns us, is not accepted by those who dissent. The imperatives of power may secure

---

[17] Lipson, Leslie, The Great Issues of Politics, (New Jersey: Prentice-Hall, Inc., 1965), p. 66.

[18] Ibid., p. 68.

compliance, but they are submitted to because of force and nothing more.

What is authority? Lipson says that "authority" is power. It is, however, power which is recognized as rightful. It is power clothed in the garments of legitimacy. Lipson says:

> Authority is government that all accept as valid. Its exercise is therefore sanctioned by those who approve the particular act or agent, and is tolerated by those who disapprove. Confronted with power, the citizen has a choice: whether to support or oppose. Confronted with authority, it is his duty to obey.[19]

It is clear that Lipson's notion of force is consistent with the one presented in this chapter. Lipson's notion of "authority" with the inclusion of force is complimentary to the authors, with the exception of Peters, and my own as presented in this chapter. Authority is power which is recognized as rightful, and which includes force, or the use of force where necessary.

In this chapter, it has been shown how force in one form or another is an essential part of the concept of "authority." Power, I agree with Lipson, amounts to the ability to wield force, and requires some support in the form of consent. Of course, the amount of consent or consensus is indeed a difficult and debatable issue. I do not intend to discuss this issue as it is beyond the scope of this essay. Since the rightful or legitimate claim to the power of authority, as I have stated before, also legitimizes force, it is essential to set forth the major claims to legitimate authority. Chapter III takes up this problem.

---

[19] Lipson, Leslie, The Great Issues of Politics, (New Jersey: Prentice-Hall, Inc., 1965), p. 68.

CHAPTER III

GROUNDS OF ENTITLEMENT TO AUTHORITY

Chapter II has demonstrated how "authority" and "force" are closely connected. When authority is considered to be legitimate, "authority" also legitimizes the use of force. It is essential, therefore, to uncover the major claims to legitimacy. Since Max Weber is well known for his description of the types of authority and their corresponding grounds of legitimacy, it seems appropriate to begin with his analysis. I shall discuss some of the commentaries of secondary sources with the account which follows because this approach has served as a useful guide for my analysis of Weber.

I shall begin with Weber's analysis of the types of authority with the intention of revealing the different claims to legitimacy in each. Before beginning it is essential to point out a limiting factor of which Weber was aware. Weber recognized that the historical relationship between the ruler and the ruled contained elements which could be analyzed on the basis of three types, but as Bendix points out:

> . . . pure types of domination are always found in combinations . . .[1]

---

[1]Bendix, Reinhard, Max Weber: An Intellectual Portrait, (New York: Doubleday & Company, Inc., 1960), p. 296.

Weber recognized that his types of authority were products of his conceptual framework, so when Weber speaks of his types as pure it must be remembered he says this only for the sake of analysis.

Weber's analysis of the types of authority--the "ideal type" analysis--focuses upon authority in terms of legal-rational, traditional, and charismatic elements. I shall refer to these types as Type I, Type II, and Type III respectively.

Type I, Weber says, rests upon a legal norm which is established either by agreement or imposition. A legal norm also requires, for its grounds of acceptance, expedience, rational values, or both. The establishment of a legal norm as a rule to follow carries a claim of obedience. A rule carries this requirement to obey because it is recognized by the members of the corporate group which is usually composed of all persons within the sphere of authority or power in question. A vital element in the effectiveness of Type I, then, is the right to issue commands because the power to command implies that persons within the sphere of authority can be forced to comply. These legal rules will form, Weber says, a body of law. A body of law consists of a system of established rules intentionally enacted. Obedience to a body of law will also apply to persons in office. Since persons in authority will usually occupy an office based upon legal rules, Weber says, persons in office are subject to the same impersonal orders. Weber calls this obedience owed only within the sphere of "rationally delimited authority." This simply means that all

persons within a sphere of authority, including those in office who give orders derived from legal rules, owe obedience to impersonal orders. These persons in office are not uncommanded commanders.

Rules in Type I, are recognized as established because of their legal status, or their legality. These rules are of two types: namely, procedural and substantive. Procedural rules set out the sphere of authority, or of an office; that is, they tell us how an office is to be run and the extent of the sphere of authority. Substantive rules, on the other hand, consist of imperatives in terms of commands and orders which are legitimate if the rules of procedure have been followed. Unfortunately, Weber does not tell his readers what test can be used to determine what substantive rules count as legal, but he does explain his notion of rationality. He says established rules are forms of everyday routine control action and are rational:

> . . . in the sense of being bound to intellectually analysable rules . . .[2]

However, to be fully rational, Weber says, persons who exercise Type I require specialized training to regulate the conduct of an office. He says:

> It is thus normally true that only a person who has demonstrated an adequate technical training is qualified to be a member of the administrative

---

[2]Weber, Max, The Theory of Social and Economic Organization, Rev. and Ed. with an Introduction by Parsons, Talcott, (London: W. Hodge, 1947), p. 361.

> staff of such an organized group, and hence only such persons are eligible for appointment to official positions.[3]

Although Weber is referring to the qualifications of administrative staff members in the passage, his analysis is eventually extended to include candidates in a much more general sense. In the most rational case, Weber says:

> Candidates are selected on the basis of technical qualifications. In the most rational case, this is tested by examination or guaranteed by diplomas certifying technical training, or both.[4]

Weber remains consistent and does not extend the type of training required beyond a legal office; the area of special training in Type I is purely technical.

Weber's notion of specialized training as the most rational claim to authority helps in drawing the distinction between being placed in authority and being an authority. For example, the more a teacher is regarded as an authority in the sphere of knowledge, the more his position in authority over students seems rationally acceptable. This significant distinction in Peters' account of the concept of authority will be taken up in depth after my account of Weber.

To sum up, Type I contains legal substantive and procedural

---

[3]Weber, Max, The Theory of Social and Economic Organization Parsons, Talcott (ed.), (London: W. Hodge, 1947), p. 331.

[4]Ibid., p. 333.

rules recognized as legitimate on grounds of their legality. These rules are rational in terms of their intellectual analysability. To be placed in authority in Type I, one does not have to be an authority as demonstrated by diploma or examinations. In Weber's most rational case, however, proof of ability will be demonstrated. The claim to legitimacy of Type I is dependent upon the existence of rationally analysable legal rules.

Persons who claim legitimacy in Type II exercise their authority on the sanctity of traditionally transmitted rules. The object of obedience, therefore, is the personal authority of a particular individual. The claim to legitimacy, in Type II, is also in terms of rules, but in contrast to Type I these rules are not of a legal nature.[5] Furthermore, traditional rules may or may not be rational in the sense that they are intellectually analysable. In Type II, there is no particular sphere of competence or delimitation, so obedience is owed to the person occupying the position of authority. Or, Weber adds, to one:

> . . . who has been chosen for such a position on a traditional basis.[6]

Type II differs from Type I in another significant sense. Type II, it is noteworthy, does not require any rational dimension to be

---

[5] If rules are regarded as pure, Type II rules are not legal.

[6] Weber, Max, The Theory of Social and Economic Organization. Parsons, Talcott, (ed.), (London: W. Hodge, 1947), p. 341.

accepted as legitimate. If and only if traditional rules initially contained a degree of rationality would we take note of it in analysis. Weber does remind us that if built-in traditional limitations are overstepped, one in authority will:

> . . . endanger his traditional status by undermining acceptance of his legitimacy.[7]

This Weberian view, Parsons says, shows Type II to be of a virtual total status. This total status in Type II, as opposed to the sphere of competence in Type I, Parsons suggests, is due to this circumstance: in Type II rules as traditionally received, but in Type I they are enacted. Parsons explains that traditional rules do not change, hence the receiving of the right to issue imperatives without regard to definite limitations. Weber, it seems to me, does not draw the same conclusion. Regarding the sphere of discretion in Type II, Weber says:

> In part, it is a matter of the chief's free personal decision, in that tradition leaves a certain sphere open for this.[8]

Weber also adds:

> There is thus a double sphere: on the one hand, of action which is bound to specific tradition; on the other hand, of that which is free of any specific rules.[9]

---

[7] Weber, Max, The Theory of Social and Economic Organization, Parsons, Talcott, (ed.), (London: W. Hodge, 1947), p. 341.

[8] Ibid., p. 341.

[9] Ibid., p. 342.

The passage removes any possibility of attaching a virtual total status to Weber's Type II.

To sum up, Type II contains rules recognized as legitimate on the grounds of tradition. These rules are not necessarily rational in terms of their intellectual analysability. One holding Type II is not specifically limited in terms of the sphere of his authority. However, Weber says, he cannot issue imperatives beyond the bounds of traditionally recognized boundaries. The claim to legitimacy in Type II is dependent upon the existence of traditional rules.

Now I shall proceed to Type III; namely, charismatic authority. The term charisma, Weber says:

> . . . will be applied to a certain quality of an individual personality by virtue of which he is set apart from ordinary men and treated as endowed with supernatural, superhuman, or at least specifically exceptional powers or qualities.[10]

Type III, Weber says, is irrational in the sense that it is completely foreign to rules. It is always based upon a communal relationship which is of an emotional form. To be accepted as valid by those who are subject to Type III, a "sign" or "proof" must be demonstrated. Originally, Weber says, such a "sign" or "proof" was usually in the form of a miracle. Type III is also dependent upon a corresponding devotion or absolute trust, on the

---

[10] Weber, Max, The Theory of Social and Economic Organization, Parsons, Talcott, (ed.), (London: W. Hodge, 1947), p. 358.

part of the subjects, in a recognized leader. Such devotion or trust cannot be regarded as providing the basis of the claim to legitimacy, Weber says:

> This basis lies rather in the conception that it is the duty of those who have been called to a charismatic mission to recognize its quality and to act accordingly.[11]

Although Peters' view that one in authority has the right to decide, judge, order, and pronounce is derived from traditional or legal rules, it can be taken that the duty in Type III also creates the right to order, command, and so on.[12] We can say that laying down of imperatives is justified, or flows legitimately from, the duty recognized by a charismatic ruler. Weber says that this right is accepted by the followers.

It seems appropriate to ask: What is the role of rationality, or a rational element, in Type III? A rational element, Bendix says, is present in the sense that to be accepted Type III must coincide with a constellation of ideas and interests.[13] A constellation of ideas and interests creates the type of background, in terms of the same or similar ideas and interests on the part of the followers, which

---

[11] Weber, Max, The Theory of Social and Economic Organization, Parsons, Talcott, (ed.), (London: W. Hodge, 1947), 359.

[12] Peters usually says that the right is derived from rules generally. He seldom draws a distinction between traditional and legal rules.

[13] See Bendix, Reinhard, Max Weber: An Intellectual Portrait, (New York: Doubleday & Company, Inc., 1960), pp. 290-294. For an interesting account of necessary and sufficient conditions of revolution, see Edwards, Lyford, The Natural History of Revolution, (New York: Russell & Russell, Inc.), 1965.

fits the extraordinary quality of a charismatic leader. A group of persons, for example, may have the same ideas about the need for a revolution. Such a background is appropriate for the acceptance of Type III. A charismatic leader would accept this revolutionary mission and claim a right to Type III, but, Bendix would suggest, the acceptance of Type III would depend essentially upon the interests and ideas of a group of persons. Weber, it is noteworthy, firmly holds that Type III is of an emotional nature, on the part of followers, and is specifically irrational.

The legitimate possession of Type III can be challenged when the leadership fails to benefit the followers. Weber says, when drought, floods, defeats in war, and other such things occurred in the times of Chinese Monarchs:

> . . . it was a sign that he did not possess the requisite charismatic virtue, he was thus not a legitimate 'Son of Heaven.' [14]

Before presenting a summary of the three types of authority, I would like to make a criticism about Type I. Weber's account of Type I does not supply us with a test to determine what counts as law. If a rule is legally established, then, on Weber's account, it is legitimate. This positivist position not only omits a test of legality, but it also attaches legitimacy to whatever is law. Such a stance completely omits the second part of the question: namely, what ought to be the law? Weber

---

[14] Weber, Max, The Theory of Social and Economic Organization, Parsons, Talcott, (ed.), (London: W. Hodge, 1947), p. 360.

justifies this omission by his role as a sociologist. Sociological analysis of ideal types of authority, he says, should not be extended to involve questions of a normative nature. This position may free Weber of a responsibility to deal with questions of ought, but surely some attention to a test is required. From jurisprudential and logical points of view, Weber's account remains inadequate. Regardless of this inadequacy it remains significant that the legitimacy of Type I is dependent upon the existence of rationally analysable legal rules.

In summary, we may say that legitimacy in Type I is derived from legal/rational rules. In Type II, legitimacy is derived from traditionally received rules, and in Type III, legitimacy is dependent upon a recognition and action in accordance with a duty to a charismatic mission. Legitimate authority of Type I is over-stepped when it is applied beyond the sphere of competence, or if it is not rationally acceptable. Type II authority will not be accepted as legitimate if it enters beyond the bounds of traditionally recognized limits. Type III, as a legitimate claim to authority, cannot be over-stepped. Either one has, or does not have a recognized legitimate claim to charismatic authority.

In his editor's comments in The Theory of Social and Economic Organization, Parsons says Weber's emphasis on orders, administration, and enforcement necessitated his inquiry into the variety of claims to legitimate authority. Weber's actual concern, Parsons suggests, was with legitimacy, and not with the types of authority as is usually suggested. Peters agrees, but he uses

the idea of the various grounds of entitlement to take the place of the word "legitimacy." Whether we take this concern to be with legitimacy or the grounds of entitlement, the notion of right to authority is pivotal to understanding the concept of "authority."

Weber's notion of legitimacy, it has been observed, implies that one has a right to issue imperatives to those within the sphere of authority. In Hobbes' account this notion is implicit. This is also true of Austin's command theory of law. This idea of the right to do certain things appears in Peters' work:

> A man who is 'in authority' for instance, clearly has a right to do certain sorts of things.[15]

These certain sorts of things Peters says include the right to order, command, judge, and make pronouncements. On Peters' account, one in authority has this right as a matter of fact. When we speak about one having the right to authority as a matter of fact, Peters says, we are talking about "authority" in the de jure sense of the concept. In the de jure sense, Peters says, we simply observe that another has a right, or a certain accepted claim, to authority. Alternatively, in the de facto sense of the concept we simply observe whether one in authority actually exercises authority. Peters says that authority in the de facto sense:

> . . . is the ability of a man to get his proposals accepted.[16]

---

[15] See Political Philosophy, Quinton, Anthony, (ed.), (London: Oxford University Press, 1967), p. 84.

[16] Ibid., p. 84.

This distinction between the de jure and de facto senses of the concept of "authority" is useful. We can, for example, apply the senses to a claim of legitimate authority which we have analyzed previously. In the Weberian Type I, the fundamental claim to legitimacy rests upon the existence of legal/rational rules. One holding Type I, in the de jure sense, has the right to wield his authority. This circumstance, in the de jure sense, is regarded as a matter of fact. The de facto sense of the concept, however, requires us to observe whether one holding de jure authority actually exercises it. If one has a right to authority but cannot exercise his authority, one may conclude that such a person was not actually in authority. Such a conclusion, to be accepted, would require this rider: the conclusion is appropriate in terms of the de facto sense. It seems most appropriate, however, to equate the de jure sense with formal authority and the de facto sense with actual authority.[17] Such a conjoinment helps to clear up Peters' observation:

> The headmaster and others in authority had, unfortunately, no authority with the boys.[18]

Understood in terms of formal (de jure) and actual (de facto) authority, we can say: (1) the headmaster and others had the right to require compliance, but (2) they could not exercise their

---

[17] Peters uses the notion of formal and actual authority to replace the de jure and the de facto senses, respectively, in his Ethics and Education, (London: George Allen & Unwin, Ltd., 1959), Chapter IX.

[18] See Political Philosophy, Quinton, Anthony, (ed.), (London: Oxford University Press, 1967), p. 84.

authority. This right to authority in Peters' example is derived from legal/rational rules and traditional rules. But I am not satisfied that the claims are clearly legitimate. My concerns about what counts as a legitimate claim to authority are left to the next chapter on teacher authority.

Peters says that the change from de jure to de facto authority fluctuates on a gradation system. Peters presents a series of statements that show us how the gradation occurs, Peters' first example is in the de jure sense:

> Wittgenstein held a position of authority in Cambridge.[19]

We notice, of course, the statement implies that Wittgenstein had a right to hold such a position. Peters' example only tells us Wittgenstein held a position; we must assume that he had such a right. I will not accept the connection between the de jure sense and right as demonstrated for this reason. The idea of right Peters has in mind seems to differ significantly from the Weberian claim to legitimate authority. This circumstance is significant and I think it is important to pursue. Peters' first example about Wittgenstein we may say takes the right of Wittgenstein to authority to be derived from: (1) legal/rational rules, (2) traditional rules, or (3) the recognition and action in accordance with a duty to a charismatic mission. This first

---

[19] See Political Philosophy, Quinton, Anthony, (ed.), (London: Oxford University Press, 1967), p. 87.

example does not tell us which claim, or combination, gives Wittgenstein a legitimate claim to authority. In Peters' second example, however, the right of Wittgenstein to make pronouncements is legitimized by virtue of his competence in the sphere of knowledge. Here is the second example:

> Wittgenstein was an authority on William James.[20]

Wittgenstein, the statement tells us, is an authority on William James. Since it would be odd to talk about such an authority issuing commands and orders, I conclude by saying: Wittgenstein makes pronouncements about the intellectual work of William James.

Peters' first example was intended to show us how a position of authority does not tell us whether one actually exercises it or not. The second example was intended to show us that Wittgenstein had a right to and exercised his authority. This second example, Peters says, is somewhere between the de jure and the de facto senses. I am not clear, to be sure, where the second example fits in the gradation. Peters' third example, however, clearly demonstrates the de facto sense:

> Wittgenstein exerted considerable authority over the Moral Science Club.[21]

Notice that this third example does not tell us Wittgenstein had a right to authority, but it tells us that he exercised authority.

---

[20] See Political Philosophy, Quinton, Anthony, (ed.), (London: Oxford University Press, 1967), p. 87.

[21] Ibid., p. 87.

Although Peters is not successful in pointing to how the de jure graduates into the de facto sense of authority because of weak examples; he has drawn the distinction between being an authority and being in authority. His third example of competence in the sphere of knowledge, as I have taken it, sets forth another basis for claiming a right to be placed in authority. This is not entirely novel, and is found in an embryonic form in Weber's account of the most rational case for legitimacy in Type I. His account, if you will recall, of the most rational claim to legitimacy in Type I requires that those in office, or in authority, have specialized training, as demonstrated by diplomas, certificates, or both. Weber's most rational case is limited to a purely technical sphere, but Peters' is extended to include the sphere of knowledge generally. To get clear on Peters' idea of competence in the sphere of knowledge, it is appropriate to review his conception of charismatic authority. Of the charismatic leader, Peter says:

> There are not really justifications of his innovations; they are ways of stressing that he need give no justification because he is a special sort of man.[22]

This view serves as a basis for the discussion of personal characteristics generally:

> For reference to personal characteristics is a way of establishing that a man has a right to make

---

[22]See Political Philosophy, Quinton, Anthony, (ed.), (London: Osford University Press, 1967), p. 87.

> pronouncements and issue commands because he is a special sort of person.[23]

It is absolutely required, or essential, that we recognize that Peters is not just referring to personal characteristics in the sense that they are charismatic in nature. The claims of a special sort of person rest:

> . . . as it were, on some kind of personal initiation into mysteries that are a closed book to most men.[24]

It seems fair to ask: of what kind are these mysteries?

Peters says:

> . . . years of study of inaccessible manuscripts would establish a man as 'an authority' on a special period of history, or years spent in Peru might establish a man as 'an authority' on the Incas.[25]

Furthermore, Peters claims, we can talk about the authorities in this sense:

> . . . in many fields people become 'authorities' by some process of personal absorption in matters that are generally held to be either inaccessible or inscrutable.[26]

From these views, I conclude that when we talk about the authorities, we are not necessarily talking about the persons in authority. We may be referring to those persons who are authorities on certain important, and perhaps inaccessible fields of knowledge.

---

[23] See Political Philosophy, Quinton, Anthony, (ed.), (London: Oxford University Press, 1967), p. 87.

[24] Ibid., p. 88.

[25] Ibid., p. 88.

[26] Ibid., p. 88.

Charismatic authority, Weber says, depends entirely upon the continued success of a special leader. Clearly, if such a leader makes too many mistakes, then his followers will desert him. This circumstance, it is informative, applies to the authorities in the sphere of knowledge as well. If an authority in the sphere of knowledge turns out to be wrong too often, then his followers will also abandon him; that is, he will not be regarded as an authority in the field of knowledge.

There is a somewhat similar notion in Weber's and Peters' analysis regarding the special sort of person and his competence in the field of knowledge. Being an authority in the sphere of knowledge may be regarded as a legitimate claim to be placed in authority. According to Weber, the greater the degree of competence as demonstrated by diplomas and certificates, the greater becomes the rational dimension of Type I; that is, the claim to authority seems most rationally acceptable on the part of followers. For Peters, as has been shown, competence in the sphere of knowledge constitutes a claim to be regarded as an authority. Such a claim, we have said, constitutes a legitimate right to make pronouncements within the sphere of competence appropriate to a particular field of knowledge or study. This claim of being an authority in a particular sphere of knowledge, it is clear, is different from being placed in authority in the sphere of social control. The transition from being an authority in the sphere of knowledge to being placed in authority, of course, does not follow.

Knowing the esoteric intracacies of Kant's Categorical Imperative does not create a right to control others in an entirely different sphere; namely, the sphere of social control. However, competence in a particular sphere of knowledge, not directly related to the sphere of social control, tends *prima facie* to justify being placed in authority. This is true of many areas of academic endeavour, but particularly characteristic of teacher authority.

Before summarizing the various "legitimate' claims to authority, I must draw a conclusion about the *de jure* and *de facto* senses of the concept of "authority" by referring to an interesting point made by Peters. He asks:

> Does the exercise of authority *de facto* presuppose that the person who exercises it must be in authority or an authority?[27]

Under normal circumstances, Peters says, there is:

> . . . a widespread connexion between being in authority or an authority and the *de facto* exercise of authority. But this is a contingent connexion, not a necessary one.[28]

Although the *de facto* sense is important, I contend, it is a concern of the empiricist, or a problem of the social psychologist. The philosophical concern deals with what counts as a legitimate claim, or right, to wield authority. For this reason,

---

[27] See *Political Philosophy*, Quinton, Anthony, (ed.), (London: Oxford University Press, 1967), p. 89.

[28] *Ibid.*, 90.

I will confine myself to the de jure sense.

To sum up, I have uncovered four major claims to being placed in authority which tend to be regarded as legitimate. They are (1) legal/rational rules; (2) traditional rules; (3) recognition and action in accordance with a duty to a charismatic mission, and (4) being an authority in the sphere of knowledge. Now that I have set out these various claims to legitimate authority, I will take up teacher authority.

CHAPTER IV

CLAIMS TO TEACHER AUTHORITY

Chapter III has shown that there are four major claims, or grounds of entitlement, to authority. They are: (1) legal/rational rules; (2) traditional rules; (3) recognition and action in accordance with a duty to a charismatic mission, and (4) being an authority in the sphere of knowledge. The right of the teacher to be in authority, in the de jure sense, is derived from legal/rational and traditional rules, and this right to exercise authority also arises from the belief that the teacher knows something; that is, he is an authority, in some cases, in his chosen discipline and knows something about the growth and development of children. The classroom teacher, Peters claims, is placed in authority to do a job for the community, and to maintain social control while he is performing his work.[1] Since the teacher is placed in authority, Peters says, it is expected that the teacher will be an expert on the behavior and development of children.[2] Furthermore, Peters says, the teacher must be an authority on some aspect of the culture which he is employed to

---

[1] See Peters' Ethics and Education, (London: George Allen & Unwin, Ltd., 1970), p. 240.

[2] See Peters' Ethics and Education, esp. Chapter IX.

pass on to children. In childhood, Peters says, parents and teachers lay down what is correct and incorrect. In this way, he says, children get the idea that there are some special people who know about matters of correctness. When placed in authority over students, the child views the teacher as a special person who has a particular insight into what is true or correct. This means, Peters suggests, children tend to regard the teacher as an, or perhaps the authority. Views of this sort may underlie Weber's thoughts:

> . . . the authority exercised in the school has much to do with the determination of the forms of speech and of written language which are regarded as orthodox.[3]

Furthermore, Weber says:

> The authority of parents and of the school, however, extends far beyond the determination of such cultural patterns which are perhaps only apparently formal, to the formation of the character of the young, and hence of human beings generally.[4]

Peters' term for the formation of the character of school children is initiation. This process involves an introduction to what a community values in such a manner that the child comes to care for the worthwhile activities he pursues. The manner of transmission according to Peters must not, as I said in Chapter II, involve

---

[3]Weber, Max, The Theory of Social and Economic Organization, Parsons, Talcott, (ed.), (London: W. Hodge, 1947), p. 327.

[4]Ibid., p. 327.

recourse to force, propaganda, and other such techniques of authority.[5] To be consistent with his description of the matter of education and becoming educated, Peters must insist upon his lofty conception of the manner of educational initiation.[6] In Chapter II, I also said that I did not wish to argue that school authority ought not try to attain the kind of authority Peters has in mind. However, as a clarification of the concept of "authority" and a description of what teacher authority is like I said, and maintain, that Peters' account must be rejected.

Peters maintains that the manner of transmission must not include control by coercion; however, if you will recall Chapter II, he also adds:

"Behind the voice there is often the cane . . ."[7] Indeed, I would like to add, without the cane, or other manifestation of force, the voice of the teacher in authority may be ignored, laughed at, and so on. Even if a teacher seeks to reach a level of control over students of the charismatic sort, the classroom condition may be such that his use of legitimate force may become so extreme as to cause legal action. The traditional belief, or rules of tradition, which recognize the need for force, have been capsulated in our Canadian society within legal provision, or

---

[5]See Peters' Ethics and Education, pp. 15-63.

[6]See Peters' Ethics and Education.

[7]Peters, R. S., Authority, Responsibility, and Education, (London: George Allen & Unwin, Ltd., 1959), p. 21.

legal rules, for the protection of persons in authority. The revised 1973-74 Criminal Code of Canada contains this in section 43 (formerly section 63) for protection of persons in the place of parents:

> Every schoolteacher, parent or person standing in place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.[8]

This section of the Criminal Code of Canada and the rulings in connection with it will constitute the subject matter of the Appendix.

It is appropriate now to evaluate the view which characterizes the teacher as an authority in the sphere of knowledge. Peters seems to recognize, although he does not state it explicitly, that the placement of a teacher in authority over children is a result and dependent upon the view: the teacher is an authority. A social studies teacher, for example, is placed in authority because he is thought to be, to some extent, an authority on social studies. It is, of course, the teacher's documents of competence, in the sphere of knowledge which he obtains from academic institutions as well as his legal certification by the appropriate state authorities which accords him the right to be placed in the position of authority. Placement in authority, in the case of the teacher, is an additional responsibility, and proof of ability to

---

[8] See Martin's Annual Criminal Code, (Agincourt: Canada Law Book Company, Ltd., 1973), p. 39.

control is necessary to retaining most teaching positions. However, can the school teacher be regarded as an authority in some area on the basis of which he is placed in authority to carry through a process of persuasion and of social control? To answer this significant question, it seems most appropriate to consider realistically whether the teacher can be regarded as an authority in any sense. Generally speaking, the teacher, regardless of his subject area, will experience difficulty when he involves himself in the esoteric concerns of the best people in his own subject area. It is quite likely that he will recognize the advanced level of these persons, and look to them for guidance in furthering his own knowledge. If the teacher has the time he will also consult scholarly journals for the views of the authorities in his field of knowledge. Although the teacher will recognize that some persons are authorities on particular topics in the sphere of knowledge, he will also recognize that the views of the authorities in the same field conflict. In the light of this, he will realize that all the views of the various authorities must be regarded as somewhat provisional. The teacher will recognize that an authority in his chosen field does not possess a direct conduit to truth, and that an authority in the sphere of knowledge is not one of the authorities in the sense that he must accept his pronouncements. In the light of these insights, the teacher will also know that for him to claim to be an expert on child development

---

[8] See Martin's Annual Criminal Code, (Agincourt: Canada Law Book Company, Ltd., 1973), p. 39. I find this provision

and behavior may not be easy to justify.

The teacher with these insights will readily agree with us that he should not be regarded as an authority. Generally speaking, however, the teacher will know more about his chosen field, or the subject area, than his students.

The teacher does not have any serious claim to being regarded as an authority in the sphere of knowledge, yet he is granted the legal right of authority over his students. There is no doubt that the teacher is placed in authority, but there may be serious philosophical questions posed with regard to his right to such a position.

The notion of "expert" implies, Peters says, an ability to apply in practice that which one knows.[9] Although a person may know about the rifle, any claim on a person's part to "expert" ranking is dependent upon his ability to achieve excellent results on the range. An "expert" automobile driver, we may say,

---

Footnote No. 8 continued:
particularly interesting because the B.N.A. Act expressly charges the various provincial governments with responsibility for educational concerns. However, assaults that fall under Section 43 of the Criminal Code of Canada clearly fall under Federal jurisdiction.

[9]Peters' notion of knows involves much more than merely having a knack for doing things. He distinguishes between training (development in a limited skill) and education. See Peters' Ethics and Education.

knows how to drive exceptionally well. Since this expert driver does not know about the principle of internal combustion and the processes of lubrication, ignition, and so on, we would not call him an authority nor an expert on automobiles.

To be an expert in his work, the teacher would have to know about psychological development, emotional problems, and so on, and it would be essential also to know how to excel in the appropriate application of this when dealing with human behavior in various forms and situations. Can the teacher be an expert (in the above mentioned sense) on matters of behavioral and social control? The teacher, we may say, knows that knowledge about behavior, learning, and development is somewhat inconclusive, and that the various psychological theories conflict. In the light of this, he also recognizes that the granting of credence to one view, at the dismissal of the others, and the attempt to apply it is potentially dangerous for children. The teacher realizes that he may cause irrevocable psychological damage. If the teacher believes in the principles of Freudian analysis and applies these in dealing with problems of social control, then he must logically reject the principles of Gestalt Therapy, for example. Such a view means literally that the teacher chooses one conflicting theory over another. Even if the teacher chooses one theory, and masters its principles, it is unlikely he could know how to apply that which he knows about to the extent that he could properly be called an expert. A teacher who is aware of how he reacts to problems of social control, will undoubtedly realize that he often appeals to

intuition, consultation, and fiats of the will in attempting to deal with behavioral problems.

The teacher knows that his education and training have not made him an authority on psychology, social principles, moral ideals, and so on, and he also realizes that the pronouncements of the authorities in these areas must be regarded as provisional. This seems to be the reason why in actual practice there is so much political and administrative control, (i.e., prepared curriculum, prescribed reading material) on the teaching activities of those who are employed in our schools.

To sum up, we may say: (1) generally speaking the teacher cannot properly be regarded as an authority in the sphere of knowledge; (2) the teacher is not quite rightfully placed in authority in the sphere of behavioral and social control; and (3) the teacher cannot be regarded as an expert on matters relating to the behavior and development of children. All three of the conclusions, it seems to me, are negative. Since the teacher is not an authority nor an expert, what right has he to be placed in authority in the sphere of behavioral and social control? To answer this very serious question, it is appropriate to review the various grounds of entitlement to authority which were discussed in the previous chapter. The claim to legitimacy in Weber's legal/rational authority, if you will recall, requires the existence of a legal rule. Any such established rules, Weber holds, constitutes a legitimate claim to authority. However, Weber also says, the rational dimension of Type I becomes most

rational when those in office, or authority, demonstrate their competence. The teacher claiming a right to Type I authority, can indicate competence, to some extent, on the basis of his education and training. To locate the legal dimension of Type I, the teacher can point out, among others, to section 43 of the Criminal Code of Canada and the legal precedents in relation to it. Traditional rules of Type II authority are much more difficult to locate. The teacher claiming Type II, can refer to tradition generally. In this way, he can appeal to the historical roots of the teacher in authority over students.[10] It is doubtful, it seems to me, that a teacher would claim to be acting in accordance with a duty to a charismatic mission as a claim to legitimate authority. The teacher may feel an obligation similar to the "ideal" charismatic leader, but because Canadian students must attend school the notion of choosing to accept the imperatives of a charismatic leader cannot be regarded as legitimate in the Weberian sense. Since the historical and traditional circumstances of teacher authority may not convince us in this country that teachers have a right to being placed in authority over students, the only right a teacher has to authority, it will be claimed, is the legal one.

What I have said so far may appear as unappreciative of what many helping teachers are doing in their classrooms. But instances of inadequacies in teaching and handling children are so numerous

---

[10] Since the traditional roots of teacher authority, in this country, have been entrenched in legal statute and precedent, it seems appropriate to refer to the legal claim as including the traditional claim to being placed in authority over children.

and readily available in popular literature--that the whole question of the teacher's right to be in authority cannot be overlooked. In an article entitled "Who Cares for the Gifted Child?" Irene Bloomstone reports Dr. Dennis H. Stott, Director of the Guelph Centre, as saying:

> Just those qualities--creativity, enterprise, curiosity, imagination--which are the mark of the brilliant, mature scholar, prevent these children from adjusting to life in a normal classroom.[11]

She goes on to say that:

> A school's misjudgment of a pupil's ability can have tragic consequences. In some smaller Quebec towns, gifted children with discipline problems have been known to be lumped together with retarded children because the teacher couldn't handle them . . . Few teachers have had professional training in coping with such children . . . [12]

Mr. John Bremer, who was Commissioner of Education in British Columbia (and whose appointment as Director of Education of the Toronto School Board was vetoed by the Ontario Minister of Education in 1970) has, in a recent article, raised the kind of questions to which I have been trying to provide an answer. He writes:

> When your child is sent home from school because his hair is too long or her dress is too short, what do you feel? . . . the real issue is not the length of dress or hair but whether the school

---

[11] Bloomstone, Irene, "Who Cares for the Gifted Child?" Reader's Digest, September, 1974, pp. 61-62.

[12] Ibid., pp. 62.

> should be obeyed. What, if anything, makes its power legitimate? Who has that power? What power does the individual have, and what guarantees it and makes it lawful? These are anxieties at the root of all educational discussions.[13]

On the whole, this chapter has shown that the teacher cannot be regarded as an authority, nor an expert, neither in the sphere of knowledge nor the sphere of behavioral and social control. This circumstance reduces, it seems to me, the rational dimension of Weber's Type I, and consequently, the legitimacy of teacher authority. Since the only acceptable ground of entitlement to teacher authority is legal it has been thought appropriate to review some of the legal aspects which define, in a limited sense, the legal right of the Canadian teacher to exercise his authority and to include this as an appendix to this thesis.

---

[13] Bremer, John, "Reshaping Education," MacLean's September 1974, p. 42.

CHAPTER V

CONCLUSION

It should be clear that a major portion of the thesis is concerned with the clarification of the concept of "authority." I have tried to show that the concept of "authority" involves the power to enforce, which is characterized by many writers on jurisprudence and politics as force. T. D. Weldon in his Vocabulary of Politics argued, for example:

> "Power and Authority" are clearly connected with one another closely. Much unnecessary difficulty has arisen because their logical grammar has been commonly misconstrued.[1]

He also pointed out that it would be:

> . . . misleading to suppose that the possession of authority adds something to the exercise of power or the employment of force. It is rather the case that force exercised or capable of being exercised with the general approval of those concerned is what is normally meant by "authority."[2]

Chapter II and Chapter III of the thesis attempted to bring to the surface the major components of the concept of legitimate authority. In Chapter IV, I attempted to point out what appeared to be the most rational claim for being placed in authority. Though I pointed to the distinction between being an authority in

---

[1] Weldon, T. D., The Vocabulary of Politics, (Harmondsworth: Penguin Books, 1953), p. 50.

[2] Ibid., p. 56.

the sphere of knowledge and being *in* authority in the sphere of behavioral and social control, I also indicated that where one is *an* authority one has a better rational claim to be *in* authority. It can be pointed out that Plato in his notion of the "philosopher-king" was indeed trying to establish such an authority.

I have indicated that Peters' concept of "authority" that operates without recourse to power, force, propaganda, and threats would be the *ideal* type of control for one to exercise over another. However, I have argued that this is not what we normally mean by "authority." And, moreover, the teacher's right to be in authority can be clearly understood by looking into the way "power" is distributed in our society.

I have tried to show that our educational system is a part of the more general legal system which is controlled by the state. Whatever authority teachers hold is determined by law. I think that the appendix will illustrate how the teacher's right to be *in* authority over the pupil, including his legal right to punish the pupil, is accorded to him by the *Criminal Code of Canada* and the rulings in connection with this statute.

BIBLIOGRAPHY

Austin, John. The Province of Jurisprudence Determined. London: Weidenfeld & Nicolson, 1954.

Bargen, P. F. The Legal Status of the Canadian Public School Pupil. The Macmillan Company of Canada, 1961.

Bendix, Reinhard. Max Weber: An Intellectual Portrait. New York: Doubleday & Company, Inc., 1962.

Benn, S. I. The Uses of Sovereignty. (ed. Quinton, Anthony), London: Oxford University Press, 1967.

Benn, S. I., and R. S. Peters. Social Principles and the Democratic State. London: George Allen & Unwin, 1959.

Bloomstone, Irene. "Who Cares for the Gifted Child," Reader's Digest. September, 1974.

Bremer, John. "Reshaping Education." MacLean's, September, 1974.

Canadian Criminal Cases, Vol. VII, Toronto: Canada Law Book Company, 1899.

Canadian Criminal Cases, Vol. VIII, Toronto: Canada Law Book Company, 1905.

Canadian Criminal Cases, Vol. XVIII, Toronto: Canada Law Book Company, 1912.

Canadian Criminal Cases, Vol. XLIX, Toronto: Canada Law Book Company, 1928.

Canadian Criminal Cases, Vol. 103, Toronto: Canada Law Book Company, 1952.

Conford, Francis, MacDonald. The Republic of Plato. London: Oxford University Press, 1945.

Cranston, Maurice. Philosophy and Language. Toronto: T. H. Best Printing Co., Ltd., 1969.

Crittenden, Brian. Education and Social Ideas. Don Mills, Ontario: Longman Canada, Ltd., 1973.

Dupuis, Adrian, (ed.), Nature, Aims, and Policy. Chicago: University of Illinois Press, 1970.

Edwards, Lyford P. The Natural History of Revolution. New York: Russell & Russell, 1965.

Enns, Frederick. The Legal Status of the Canadian School Board. The Macmillan Company of Canada, 1963.

Fuller, Lon L. The Problems of Jurisprudence. Brooklyn: The Foundation Press, Inc., 1949.

Gribble, James. Introduction to Philosophy of Education. Boston: Allyn & Bacon, Inc., 1973.

Hare, R. M. The Language of Morals. London: Clarendon Press, 1952.

Hare, R. M. "Adolescents inot Adults," Aims in Education. (ed. T. H. B. Hollins), England: Manchester University Press, 1964.

Hart, H. L. A. The Concept of Law. London: Oxford University Press, 1961.

Hirst, P. H. & Peters, R. S. The Logic of Education. London: Routledge & Kegan Paul, 1958.

Katz, Jay; Joseph Goldstein; Allan M. Dershowitz (eds.), Psychoanalysis, Psychiatry, and Law. New York: The Free Press, 1957.

Laski, Harold J. Authority in the Modern State. An Anchor Book, 1968.

Lasswell, Harold. Politics: Who Gets What, When, How? Cleveland: The World Publishing Company, 1965.

Lipson, Leslie. The Great Issues of Politics. Englewood Cliffs: Prentice-Hall, Inc., 1965.

Llewellyn, Karl N. Jurisprudence: Realism in Theory and Practice. Chicago: University of Chicago Press, 1962.

Lloyd, Dennis. The Idea of Law. Harmondsworth: Penguin Books, 1964.

Lucas, Christopher J. What is Philosophy of Education? London: The MacMillan Company, 1969.

Martin's Annual Criminal Code. Agincourt: Canada Law Book, Ltd., 1973.

Perelman, C. H. Justice. Toronto: Random House of Canada, Ltd., 1967.

Peters, R. S. "Authority," Political Philosophy. (ed. Quinton Anthony, London: Oxford University Press, 1967.

Peters, R. S. Authority, Responsibility, and Education. London: George Allen & Unwin, Ltd., 1963.

Peters, R. S. Ethics and Education. George Allen & Unwin, Ltd., 1970.

Peters, R. S. The Concept of Motivation. London: Routledge & Kegan Paul, 1958.

Peters, R. S. (ed.), The Philosophy of Education. London: Oxford University Press, 1973.

Plamenatz, J. P. Consent, Freedom, and Political Obligation. London: Oxford University Press, 1968.

Quinton, Anthony, (ed.), Political Philosophy. London: Oxford University Press, 1967.

Rees, W. J. "The Theory of Sovereignty Restated," Philosophy, Politics, and Society. Laslett, P. (ed.), Oxford: Basil Blackwell, 1963.

Roland, Jane. "On the Reduction of 'Knowing that' to 'Knowing How.'" Language and Concepts in Education. (eds. Smith B. O. and Ennis, R. H.), Illinois: Rand McNally & Co., 1962.

Ryle, Gilbert. The Concept of mind. Middlesex, England: G. B. Penguin Books, Ltd., 1963.

Sabine, George H. A History of Political Theory. New York: Holt, Rinehart, and Winston, Inc., 1961.

Scheffler, Isreal. "Philosophical Models of Teaching," Harvard Educational Review. Vol. 35, No. 3, 1965.

Searle, John R. Speech Acts: An Essay in the Philosophy of Language. Great Britain: Alden & Mowhay, Ltd., 1969.

Taylor, P. W. Normative Discourse. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1961.

Tremeear's Annotated Criminal Code. The Carswell Company, Ltd., 1974.

Weber, Max. The Theory of Social and Economic Organization. (ed. and Rev. T. Parsons), London: W. Hodge, 1947.

Weldon, T. D. State and Morals: A Study in Political Conflicts. London: Murray, 1962.

Weldon, T. D. The Vocabularly of Politics. Harmondsworth, Middlesex: Penguin Books, Ltd., 1953.

Winch, Peter. "Authority," Political Philosophy. Quinton Anthony, (ed.), London: Oxford University Press, 1967.

Wright, Cecil A. Cases on the Law of Torts. Toronto: Butterworth & Co., Ltd., 1963.

Young, G. "Authority," Canadian of Philosophy. Vol III, November, 1974.

A P P E N D I X

LEGAL PROTECTION

FOR

TEACHERS IN AUTHORITY

APPENDIX

LEGAL PROTECTION

FOR

TEACHERS IN AUTHORITY

The case of Brisson v. Lafontaine (1864) is summarized as follows:

> A child of 6 years, asked by the teacher to do some reading, did not find as quickly as was desired the page that he had to read. He was in the first row. The teacher made him pass to the second row and ordered him to read immediately. The child was already crying and could not obey the order. She made him pass to the third row and so on until he reached the last. The child was crying more and more and did not do the required reading. Thereupon the teacher, using a big leather strap 15 ins. long, struck him violently for 10 to 15 minutes, inflicting serious wounds on his face and hands. The child received treatment and his nervous condition was such that he refused to return to the class.[1]

In the Queen v. Robinson (1899), the legal right of a school principle to impose corporal punishment was primarily established on the basis of Blackstone's Commentaries, American legal precedent and Section 55 of the Criminal Code of Canada. Mr. Justice Chipman with regard to the right to impose corporal punishment refers to Blackstone as on of the authorities on such matters, and

---

[1] See Canadian Criminal Cases, Vol. 103, (Toeonto: Canada Law Book Company, Ltd., 1952), p. 357.

quotes this passage from his Commentaries:

> The parent may lawfully correct his child, being under age, in a reasonable manner, for this is for the benefit of his education. He may also delegate part of his parental authority during his life, to the tutor or school master of his child; who is then in loco parentis, and has as such a portion of the power of the parent committed to his charge, viz., that of restraint and correction, as may be necessary to answer the purposes for which he is employed.[2]

Mr. Justice Chipman also referred to the American Case of The State v. Pendergrass which holds:

> The law confides to school masters and teachers a discretionary power for the infliction of punishment upon their pupils, and will not hold them responsible criminally, unless the punishment be such as to occasion permanent injury to the child, or be inflicted merely to gratify their own evil passions.[3]

The third major source of law cited by Mr. Justice Chipman, in The Queen v. Robinson, is Section 55 of the Criminal Code of Canada which reads:

> It is lawful for every parent, or person in the place of a parent, schoolmaster, or master, to use force by way of correction towards any child, pupil, or apprentice under his care, provided that such force is reasonable under the circumstances.[4]

All three sources of law cited by Mr. Justice Chipman deal with the question of law and the question of fact. The question of law asks:

---

[2] See Canadian Criminal Cases, Vol.VII, (Toronto: Canada Law Book Company, Ltd., 1899), p. 53.

[3] Ibid., p. 54.

[4] Ibid., p. 56.

does the school principal, in this case, have the legal right to impose corporal punishment? The question of the fact, which cannot be addressed until the question of law is affirmed, asks: was the punishment imposed excessive or not?[5] The question of law, or the right of the schoolmaster to use force is clearly granted by statute. The term schoolmaster in Section 55 of the Code, however, may cause some confusion. One may ask whether the term schoolmaster means school principal or teacher, or both? Although traditionally the term schoolmaster seems to have referred to teachers generally, the confusion, if it exists, may arise from the fact that most of the appellants in cases dealing with the schoolmaster's right to impose punishment have been vice-principals or principals.[6] Any doubt we may have about the right of the Canadian teacher to the provisions of Section 55 of the Code is found to be unwarrented by the wording of Section 43 of the revised Criminal Code of Canada which reads:

> Every schoolteacher, parent, or person standing in the place of a parent is justified in using

---

[5] See Bargen, P. F., The Legal Status of the Canadian Public School Pupil, (The Macmillan Company of Canada Limited, 1961, p. 125.

[6] Where cases appear which have the teacher as charged with criminal assault, such teachers are usually the only teacher of a large one-room school. In effect such teachers are school principals. Other than such cases, the vice-principal or the principal usually handles the imposition of punishment.

> force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.[7]

The right of the Canadian teacher to impose force by way of correction upon pupils, as we have seen, is firmly entrenched in Canadian statute law. Since the question of fact may tell the teacher what kind of punishment he imposes upon pupils will probably excuse him from what would otherwise be an indictable offence, it is appropriate to review some of the major cases in relation to teacher authority. In order to review these cases, I emphasize Regina v. Haberstock (1970) for these reasons: (1) the Haberstock Case is the most recent with regard to Section 43 of the Code,[8] and (2) this case cites the major precedents in relation to Section 43 of the Code.

Regina v. Haberstock originated with the Saskatchewan

---

[7] See Martin's Annual Criminal Code, (Agincourt: Canada Law Book Company, Ltd., 1973), p. 39. Note that Section 43 replaces Section 63, and that Section 63 replaces Section 55. Martin's Annual Criminal Code explains that the reference to master and apprentice is left out of Section 43 because such relationships are less common nowadays. No reason is given for the replacement of schoolmaster with schoolteacher.

[8] The Haberstock Case is not the most recent in reference to Section 43. R. v. Trynchy (1970) occurred later. Trynchy, however, was a bus driver employed to transport children. He was not a schoolteacher. The Haberstock Case is regarded, therefore, as the most recent reported case in relation to teacher authority. In The Trynchy Case, incidentally, the Court decided that bus drivers are also protected by Section 43 of the Code.

Court of Appeals on December 4, 1970.[9] Here are the facts as cited in the Saskatchewan Court of Appeals based on Haberstock's conviction in a lower court. Theee pupils, Randy Lang, Lyle Sens, and Darwin Steininger, who were on a school bus facing an open window located at Neudorf, Saskatchewan, allegedly shouted and called the vice-principal, Lawrence Haberstock, names one of which was "short-ribs." Haberstock, according to the record was standing 20 ft. from the school bus, and could see the boys clearly. Haberstock told the boys that he would see them on Monday because the bus was about to leave. On Monday morning, Haberstock saw Randy Lang and Lyle Sens standing in the school

---

[9]It is important to clear up a concern that troubled me, and which may trouble the reader as well. Why, we may ask, does this Appendix tend to emphasize the decisions of the various Provincial Courts of Appeal? The answer is indeed significant. The Province of Alberta, it is informative, does not usually publish records of criminal cases which are not appealed. This circumstance is to be changed in the near future. At present, however, if one wishes to acquire records of a case which was not appealed, then one would have to go to the various courts toacquire such records. Such a study would be informative and well-worth pursuing, but its scope would be immense. The lack of appeals, it is noteworthy, may tell us something rather significant. We can assume, for example, that there are few cases which are not decided in favour of the teacher. This assumption, though not entirely warranted, is in accord with the general legal status of the Canadian teacher in authority; viz, most appeals have favoured the teacher. One of the earliest precedents in favour of the teacher holds: "If there is any reasonable doubt whether the punishment was excessive, the school teacher should have the benefit of the doubt." (See Canadian Criminal Cases, Vol, VII, p. 52.) This legal conclusion, and other similar ones, have led to decisions which you may find quite distressing. It may be difficult, for example, to visualize a child of tender years black and blue from the legally excusable action of one whom you may not regard as having a justifiable right, in your estimation, to carry on in such a manner.

yard about 9"50 a.m. According to the record, Haberstock walked up to the boys and said:

> Now, boys, I am sure you know what this is for and slapped each of them on the side of the face.[10]

After this Haberstock saw Darwen coming out of the school and said: "You're in on this, too," then Haberstock slapped Darwin on the side of the face.[11] According to the record, Darwin said: "Please, Mr. Haberstock, I didn't call you names."[12] Later that Monday afternoon Darwin was taken to a dentist. The dentist found a chip of tooth the size of a pencil lead which had come from a molar on the right side of Darwin's mouth where he had been slapped. The dentist also testified, however, that there was no evidence the slap caused the chip.

In Magistrate's Court, Haberstock was convicted for the following reasons: (1) Darwin had not called Haberstock names, and (2) the assault was not for purposes of correction. Saskatchewan Court of Appeals Mr. Justice Culliton, who allowed Haberstock's appeal, began his decision with this reference to R. v. Corkum:

> The exercise of disciplinary powers by a schoolteacher . . . is to be regarded as a delegation of parental authority.[13]

---

[10] See R. v. Haberstock in Tremeear's Annotated Criminal Code, (Toronto: The Carswell Company, Ltd., 1974, p. 434.

[11] Ibid., p. 434.

[12] Ibid., p. 434.

[13] Ibid., p. 434.

In dealing further with the question of law, Mr. Justice Culliton cited R. v. Metcalfe, and Campeau v. The King. Of these cases, Mr. Justice Culliton said:

> What would, under the law, generally be an assualt, is permitted in the discipline of children by a school-teacher provided the conduct of the child merits punishment and the punishment is reasonable and appropriate.[14]

Since these two cases are cited in support of the question of law, it will be appropriate to refer to them.

Rex. v. Corkum originated with the conviction of Corkum, a school teacher, for assault I (excessive punishment). The alleged assault, involved the strapping, on both hands of a boy named Young. On the question of law, and that to which Mr. Justice Culliton refers in The Haberstock Case, the Court of Appeals held:

> A school teacher has the right to use reasonable force to enforce school discipline against an unbehaving pupil.[15]

The sentence following this conclusion deals with the question of fact:

> Marks or discolouration of the skin are not necessarily evidence of excessive punishment as will render the teacher subject to conviction for assault.[16]

Roberts, the judge in the Corkum Case, said:

---

[14] See R. v. Haberstock in Tremeear's Annotated Criminal Code, (Toronto: The Carswell Company, Ltd., 1974 p. 434.

[15] Canadian Criminal Cases, Vol, VII, (Toronto: Canada Law Book Company, Ltd., 1937, p. 114.

[16] Ibid., p. 114.

> The parents of the boy gave evidence as to the effect of the punishment in the way of discolouration and swelling. But what they say when considered with the other facts in the case, including the evidence of disinterested witnesses, is not convincing, and rather suggests parental fear and exaggeration and a lack of proper support of the teacher.[17]

Judge Roberts, it is noteworthy, allowed the appeal largely due to what he called a fundamental legal principle:

> . . . the authority of a school teacher to chastise a pupil is to be regarded as a delegation of parental authority.[18]

If we are not satisfied with this decision, Roberts says:

> Rex. v. Zinck . . . is along the same line . . . A more recent case, and to the same effect, is that of Rex. v. Metcalfe . . .[19]

I would like to review The Zinck Case to determine what Judge Roberts has in mind.

The King v. Zinck originated with the conviction of Minnie Zinck, by a justice of the peace, for:

---

[17] Canadian Criminal Cases, Vol VII, (Toronto: Canada Law Book Company, Ltd., 1937, p. 115. To be fair to Judge Roberts, it is appropriate to review "the other facts of the case" to which he refers. The facts, as Judge Roberts found them included the following: (1) Corkum was the only teacher in a one-room country school; (2) the average attendance at this school was 65 pupils ranging in age from 6 to 14; (3) the pupil, Young was lacking in obedience and respect for teacher authority; (4) the school inspector, shortly before the strapping incident, told Corkum that he must keep better order in his school, and (5) the day before the assault Young had been kept in late as punishment, but there was no improvement in his behavior the next day.

[18] Ibid., p. 113.

[19] Ibid., p. 115.

> . . . assaulting, beating, and ill-usung a boy named Shupe, the boy being a scholar in the school where the defendent taught as a teacher at Martin's Point.[20]

I will quote directly from the account of the facts because the account by County Judge Forbes is very vivid:

> The boy, Raymond Shupe, 14 years of age . . . has been a general nuisance as a scholar for some time past, and on a Wednesday in February last he positively refused to get his lessons up or learn or say them. The teacher stayed in after school hours with the Shupe boy and another lad named Rafuse, and the teacher stayed with them and coaxed and tried to get them to learn their lessons . . . finally the teacher did what she was legally and morally bound to do; took the boy by the collar and strapped him over the shoulders.[21]

Shup's mother testified:

> . . . great ridges showed on his right hand and blood burst through the skin on the back of his shoulders.[22]

In response to Mrs. Shup's testimony, Judge Forbes said:

> . . . the facts are against her. No one else saw blood except on the back of left fingers.[23]

Judge Forbes concluded with:

> Was the force used by Miss Zinck, as teacher, reasonable? I certainly think it was very reasonable and would be so under less trying circumstances.[24]

---

[20] Canadian Criminal Cases Vol. XVIII, (Toronto: Canada Law Book Company, Ltd., 1912, p. 456.

[21] Ibid., p. 457.

[22] Ibid., p. 457

[23] Ibid., p. 457-458

[24] Ibid., p. 458.

Clearly, Shupe caused problems for Zinck. At the original trial, he apparently laughed at his mother's concern about the bleeding caused by the whipping. Such a boy, admittedly, may have required some sort of chastisement. What is important to The Haberstock Case, it seems to me, is the fact that Mr. Justice Culliton refers to Corkum on the question of law, but not on the question of fact. It is clear that Mr. Justice Culliton refers to that which seems to support the question of law, and nothing more.

I shall now turn specifically to the question of fact. Mr. Justice Culliton's citations with regard to the question of fact are found in R. v. Robinson (1899) and R. v. Gaul (1903). Of these cases Culliton says:

> Whether the force used in administering punishment was reasonable or excessive is a question of fact, to be determined in the circumstances of each case.[25]

Furthermore:

> . . . the test is whether, at the time the punishment was administered, it was reasonable?[26]

Hearing the appeal, in The King v. Gaul, the Supreme Court of Nova Scotia ruled that the lower court should have tried to determine whether the force used by a schoolmaster was reasonable under the circumstances.

---

[25] See R. v. Haberstock in Tremeear's Annotated Criminal Code, (Toronto: The Carswell Company, Ltd., 1974), p. 434.

[26] Ibid., pp. 434-435.

Mr. Justice Culliton, in The Haberstock Case, cites R. v. Robinson to show that there are two questions to be asked; namely, (1) does the teacher have the legal right to impose corporal punishment, and (2) was the imposition of corporal punishment reasonable under the circumstances? Mr. Justice Culliton cites R. v. Gaul to show that, as to the question of fact, the court must ask: at the time the punishment was administered was it reasonable? Neither of the citations, it is clear, tells us what counts as reasonable punishment. Because of this circumstance, presumably, Culliton also cites Campeau v. The King (1951). The Quebec Court of King's Bench, Appeal Side, held (in Campeau v. The King):

> While Cr. Code s. 63 authorizes a school teacher to use reasonable force in disciplining a pupil and while the fact that bruises result is not necessarily determinative of unreasonable punishment, the manner of its infliction and the parts of the body to which it is applied may warrant a conviction of assault against the schoolmaster, as, for example, where he punishes by striking the back of the pupil's hand (where the bone covering is thin) against the corner of a desk.[27]

We may ask, in the light of these various decisions, how they are applied to The Haberstock Case (1970)? As to the question of law, The Corkum Case held:

> A school teacher has the right to use reasonable force to enforce school discipline against an unbehaving pupil.[28]

---

[27] Canadian Criminal Cases, Vol. 103, (Toronto: Canada Law Book Company, Ltd., 1952), p. 355.

[28] Canadian Criminal Cases, Vol. VII, (Toronto: Canada Law Book Company, Ltd., 1937), p. 114.

We may ask then, were Lyle Sens, Randy Lang, and Darwin Steininger unbehaving students? The trial Judge in the lower court found that Darwin had not participated in name-calling, and said:

> In my opinion, it follows from this that the assault upon the boy was not for the purpose of correction, and I therefore find the accused guilty.[29]

Mr. Justice Culliton claimed that the trial judge should have asked: were there reasonable and probable grounds upon which Haberstock was correct in concluding that Darwin had participated? Haberstock had such grounds, Culliton says, and having an honest belief that Darwin had participated in name-calling:

> . . . the appellant was entitled to use force by way of correcting Darwin Steininger, who was a pupil under his care at the time.[30]

Culliton adds:

> Under such circumstances, a parent would be so excused, and, in my view, a teacher, exercising a delegated parental authority, is entitled to the same protection.[31]

---

[29] See R. v. Haberstock in Tremeear's Annotated Criminal Code, (Toronto: The Carswell Company, Ltd., 1974), p. 435.

[30] Ibid., p. 435.

[31] Ibid., p. 436. As I understood Culliton's view, Haberstock made a mistake. He was excused from the assault, however, because he honestly believed he was not making a mistake. A teacher as an authority and an expert, in the sphere of behavioral and social control, it seems clear, would at least consult with the boys to determine who was involved in name-calling. Also note that The Corkum Case, nor any other Canadian precedent connected with Section 43 of the Code, allows a teacher to assume that a student misbehaved.

Given that the question of law is settled, Culliton addresses himself to waht he regards as the only remaining question: namely, that of fact. Was the imposition of corporal punishment reasonable under the circumstances? Presumably, one would attempt to answer such a question with reference to major precedents. Alternatively, Mr. Justice Culliton rests his judgment on an admission of the trial judge who convicted Haberstock.

> In the event that I am not correct in this view of the matter, then I would say that, in my view, the force applied did not exceed what was reasonable in the circumstances. I would possibly have been otherwise inclined had the slapping taken place immediately following the name-calling on Friday, even though the accused himself admits that slapping on the face is not a customary manner of exercising discipline.[32]

Mr. Justice Culliton concludes:

> I think the proper inference to be drawn from the remarks of the learned trial judge is that, had Darwin Steininger been similarly strapped at the time the name-calling took place, he would not have found the force used excessive, or at least would have had a reasonable doubt in respect thereto. To hold that force which was otherwise reasonable, became unreasonable because of a three-day's delay, is an erroneous basis upon which to make such a finding, and one which cannot be supported.[33]

The Appendix has tried to show how various precedents have been established which can be categorized as questions of law and

---

[32] See R. v. Haberstock in Tremeear's Annotated Criminal Code, (Toronto: The Carswell Company, Ltd., 1974), p. 435.

[33] Ibid., p. 436.

of fact. The Appendix has shown that the question of law (with regards to teachers in authority) has been affirmed and firmly entrenched into statute as well as precedent. In the light of the decision in The Haberstock Case, we have seen that a test for what counts as reasonable punishment has varied from specifics, to some extent, in Campeau v. The King, to reasonable circumstances in each case in R. v. Gaul. The Haberstock Case, by its reference to major precedents, appears to set up a test to determine what counts as reasonable. As we have seen, such a test is not established. The Haberstock decision, it seems clear to me, is the most obvious manifestation of Canadian law to keep the Canadian teacher well protected while he is in authority over children.